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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/672,523	09/27/2000	Kuriacose Joseph	2050.001US3	2175	
44367	7590	08/11/2010	EXAMINER		
SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938			BAYAT, BRADLEY B		
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AUG 10 2010

SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV
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Minneapolis, MN 55402-0938

In re application of
Kuriacose et al. : DECISION ON REQUEST
Application No. 09/672,523 : FOR RECONSIDERATION
Attorney Docket No.: 2050.001US3 : OF DISMISSED PETITION
Filed: September 27, 2000 : UNDER 35 CFR 1.181(A)(3)
For: METHOD AND SYSTEM TO :
FACILITATE ORDERING OF AN ITEM :
:

This is a decision on the petition entitled "Request for Reconsideration of Dismissed Petition under 1.181(A)(3)" filed April 26, 2010. Such petition requests "the exercise of supervisory authority to provide guidance to the pertinent Technology Center to correct what are believed to be incorrect legal interpretations in the Technology Center of the guidance of the Office that are leading to inappropriate rejections under 35 USC 251".

The petition is **DENIED**.

Discussion

The petition renews a request for remedy in the form of:

- 1) the exercise of supervisory authority to provide guidance to the identified Group to correct what are believed to be incorrect interpretations in the Group regarding 35 USC § 251 and MPEP § 1412 addressing the requirements of that statute, and specifically the inapplicability of the prohibition against recapture in the circumstance presented in the present application, wherein claims have been submitted for an invention not claimed the original patent; and
- 2) a determination that the pending claims are not barred under 35 USC § 251 by the prohibition against recapture. This proposed remedy is offered at page 1 of the instant Petition.

A renewed review of the file again does not reveal that the Examiner has acted inconsistently with guidance already provided by the Office regarding 35 USC § 251 and

MPEP § 1412. Accordingly, further guidance, particularly as it applies to the circumstances present in the instant application, is not warranted.

A renewed review of the file and the instant petition again reveals that the petition is directed to an appealable matter rather than a petitionable matter. The refusal to grant claims because the subject matter as claimed is considered unpatentable is called a "rejection". In the instant case, the Examiner has refused to grant claims based upon a rejection of claims 10-11, 13-24, 27, 33, 38-39, 41-43, 45-55, 57, 63, 260, and 262 under 35 USC 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. Rejections involving the merits of the claim are subject to review by the Board of Patent Appeals and Interferences and will therefore not be reviewed by the Director. See MPEP 706.01.

Summary

The petition is **DENIED**.

Any review of the Technology Center Director's decision should be made by way of renewed petition specifically identifying a request for review of the Technology Center Director's decision by the Director of the USPTO.

A notice of appeal was filed on May 18, 2010. In order to avoid abandonment of the application, Appellant must file a brief under 37 CFR 41.37 within two months from the date of filing the notice of appeal. This 2-month time period may be extended under 37 CFR 1.136(a), and if 37 CFR 1.136(a) is not available, under 37 CFR 1.136(b) for extraordinary circumstances.

Any questions concerning this decision should be directed to Jeffrey A. Smith at (571) 272-6763.



Wynn Coggins, Director
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